

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 01-55472-JRG and
01-55473-JRG
CONDOR SYSTEMS, INC., a Chapter 11
California corporation; and CEI
SYSTEMS, INC., a Delaware Jointly Administered for
corporation, Administrative Purposes Only
Debtors.

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**ORDER ON CROSSROADS, LLC'S
FINAL FEE APPLICATION**

I. INTRODUCTION

By notice filed February 19, 2004, Crossroads, LLC sought final approval of \$315,116.25 in fees and \$21,492.46 in expenses for the period of July 31, 2002 through December 12, 2003. The fees and expenses are related to Crossroads' retention as the debtors' responsible individual and acting Chief Executive Officer.

The court ordered an audit of Crossroads' fees on March 24, 2004. The audit report was submitted to the court on August 2, 2004. The court gave the parties an opportunity to respond to the audit. Having received responses from Crossroads and the United States Trustee (UST), the court

1 is prepared to grant in part and deny in part the fees and expenses as
2 herein stated.

3 **II. FEES**

4 The court's August 29, 2002 Order authorizing the employment and
5 retention of Crossroads stated that "Crossroads shall be compensated in
6 accordance with Sections 330 and 331 of the Bankruptcy Code, the Federal
7 Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court,
8 the U.S. Trustee's Guidelines, and any Orders of this Court." Section 330
9 of the Bankruptcy Code provides that the court may award to a professional
10 employed under §§ 327 or 1103 reasonable compensation for actual,
11 necessary services rendered and reimbursement of actual, necessary
12 expenses. In determining the amount of reasonable compensation, the court
13 considers the nature, the extent, and the value of the of such services,
14 taking into account all relevant factors. 11 U.S.C. § 330(a)(3). With
15 this in mind, the court reviewed the audit report.

16 **A. Pre-retention services are not compensable.**

17 Crossroads' date of retention began on July 31, 2002. However, the
18 audit report reveals that Crossroads seeks fees and expenses that were
19 incurred on July 30, 2002, prior to the date of its retention. [See
20 Exhibits A and J.]¹ In its response Crossroads acknowledges this and
21 agrees to a reduction in fees of \$377.00 and expenses \$216.97 for pre-
22 retention services.

23 **B. Vague time entries require a reduction in compensation.**

24 The audit report also highlights entries that are vague in
25 description. [See Exhibit B.] Crossroads responds that these entries only
26

27 ¹ All references to exhibits are to the exhibits that appear in the "Review and Analysis
28 of Final Fee Application Submitted by Crossroads, LLC," which was filed with the court on
August 2, 2004.

1 comprise 4.15 hours of the total time entries audited and of the nine
2 entries in this category, all but one is for time of 0.7 hours or less.
3 Crossroads states that specific identification was inconsequential to the
4 activity recorded.

5 However, time entries are not simply to record the number of hours
6 worked; they also should detail the type of work done. Regardless of the
7 method of compensation and regardless of the type of professional fees at
8 issue, the court must evaluate the complexity and necessity of work done
9 on behalf of the estate in order to determine appropriate compensation.
10 In re Poseidon Pools of America, Inc., 180 B.R. 718, 729-31 (Bankr.
11 E.D.N.Y. 1995).

12 Of particular concern to the court are entries with vague
13 characterizations of the services performed with no detail concerning the
14 general subject matter of correspondence between parties to the case. In
15 reviewing the entries on Exhibit B, the court denies the following entries
16 due to a lack of adequate description of services: 8/5/02; 8/14/02;
17 8/22/02; and 8/27/02 (1st entry). For these entries the court is unable
18 to determine whether the task is necessary and whether the compensation
19 sought is reasonable. This results in a fee reduction of \$881.50.

20
21 **C. The court does not take issue with entries categorized as
"clumped entries."**

22 The audit report also underlines a number of clumped entries on the
23 time records. [Exhibit C.] Crossroads responds that it does not believe
24 the entries on Exhibit C are clumped. Instead each entry reflects related
25 activities to a specific task. Having reviewed the entries in this
26 category, the court finds it more appropriate to deal with particular
27 entries as they are associated with other aspects of the audit report and
28

1 does not take issue with this group of entries.

2 **D. Intra-office conferences and e-mails are reasonable in the**
3 **context of this case.**

4 Fee entries related to intra-office conferences and intra-office e-
5 mails have been categorized. [See Exhibits D and H.] These comprise only
6 \$2,293.00 of the total fees requested. Given the limited nature of such
7 conferencing and the fact that in a complex case no single professional
8 is going to possess all of the skills to accomplish the necessary tasks,
9 the court does not take issue with these fees.

10 **E. Clerical/administrative tasks are not compensable by the**
11 **estate.**

12 Entries that appear to be for clerical and administrative type
13 activities are highlighted in the audit report. [See Exhibit E.] The
14 total amount attributed to these entries is \$7,863.88. The UST responds
15 that it had suggested that Crossroads agree to a \$1,500.00 reduction for
16 billings due to administrative/clerical tasks and its recollection is that
17 Crossroads had so agreed. Crossroads responds that Miles Stover from
18 Crossroads was the sole responsible individual and acting Chief Executive
19 Officer of the debtors. Mr. Stover was a "one-man show" who was on
20 occasion required to perform some administrative type services. According
21 to Crossroads, these services were unavoidable given the role and function
22 Mr. Stover performed for the debtors.

23 However, as discussed in Guideline 18:

24 18. Administrative Tasks - Time spent in addressing, stamping and
25 stuffing envelopes, filing, photocopying or "supervising" any
26 of the foregoing is not compensable, whether performed by a
professional, paraprofessional or secretary.

27 As the court discussed from the outset, Crossroads' employment and
28 retention was to be in accordance with § 330 of the Bankruptcy Code and

1 the local guidelines of the court. Clerical services are overhead
2 expenses and are not compensable under § 330(a). Sousa v. Miguel (In re
3 United States Trustee), 32 F.3d 1370, 1374 (9th Cir. 1994). Services such
4 as filing, assembling or compiling documents, organizing files,
5 calendaring dates, making copies, faxing or transmitting, moving records,
6 to name a few, are inherently clerical. Having reviewed the entries on
7 Exhibit E, the court finds these entries to be clerical in nature and are
8 thus disallowed. The court points out that several entries on Exhibit E
9 also appear on Exhibit C (Clumped Entries). In attempting to account for
10 the clumped entry, the auditor estimated the amount of time specifically
11 associated with the clerical portion of the entry and adjusted the fee
12 accordingly. [See, e.g., Exhibit E: page 2, entry of 11/8/02; page 3,
13 entries of 1/25/03, 3/13/03, 3/21/03.] Having reviewed the estimates, the
14 court finds them to be reasonable. Thus, the court disallows \$7,863.88
15 in fees related to administrative/clerical tasks.

16 **F. Compensation related to fee applications and payment of**
17 **professionals is compensable under § 330 of the Bankruptcy**
18 **Code.**

19 Another category of fees Crossroads seeks relates to its retention
20 and fee applications. [See Exhibit I-1.] These fees amount to 4% of the
21 total fees sought in this case. Section 330 of the Bankruptcy Code
22 contemplates compensation for the preparation of a fee application. 11
23 U.S.C. § 330(a)(6); In re Smith, 317 F.3d 918, 927 (9th Cir. 2002). As with
24 all compensation requested the court must determine an amount that is
25 reasonable. Some courts have utilized a benchmark such as 5%. In re
26 Bass, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998); In re Spanjer Bros.,
27 Inc., 203 B.R. 85, 93 (Bankr. N.D. Ill. 1996). Such benchmarks are
28 helpful but the circumstances of each case should control. Having

1 considered the entries on Exhibit I-1, the court takes no issue with these
2 fees.

3 The entries on Exhibit I-2 are related to other professionals'
4 retention and compensation. In reviewing these entries, the court is
5 satisfied that they relate to the actual and necessary task of paying
6 other professionals in these bankruptcy cases and takes no issue with
7 these fees. For that reason the court finds these entries to be
8 reasonable.

9 **III. EXPENSE ITEMS THAT ARE DISALLOWED**

10 As for expenses, several issues have arisen as a result of the audit.

11
12 **A. Pre-retention Expenses**

13 As discussed above, there are several expenses that relate to pre-
14 retention activity. [See Exhibit J.] Crossroads agrees with the denial of
15 these expenses in the amount of \$216.97.

16 **B. Photocopy Charges**

17 The audit points out that photocopy charges are not disclosed on an
18 aggregate and per-page basis as required by Guideline 27 for internal
19 photocopies. [See Findings, page 13.] In addition, while Guideline 28
20 allows for reimbursement of outside copying at actual costs, the fee
21 application is not clear about whether the photocopy charges are for
22 internal or outside copying. Crossroads offer no explanation about the
23 nature of the photocopy charges in its memorandum regarding the fee audit.
24 Thus, reimbursement of these expenses in the amount of \$74.07 is denied.

25 **C. Overhead**

26 Reimbursement is sought for expenses that the court considers part
27 of the overhead cost of doing business. [See Exhibits M and N.] The court
28

1 denies these expenses in the amount of \$255.97.

2 **D. Travel**

3 A review of travel related expenses demonstrates a number of trips
4 between Seattle, Washington and San Jose, California. [See Exhibit L.]
5 It appears that Mr. Stover resides in the State of Washington. The court
6 does not take issue with these fees, except for the trip from Anchorage,
7 Alaska to San Jose, California. No reason is given to explain the
8 relationship of this trip to the estate. Thus, the court will deny
9 reimbursement for the expense of \$571.43 for airfare referencing
10 Anchorage. [See Exhibit L: page 6, entry of 11/28/03.]

11 **IV. CONCLUSION**

12 The court approves on a final basis fees in the amount of
13 \$305,993.87, having denied \$9,122.38 of the fees requested. Expenses in
14 the amount of \$20,374.02 are approved on a final basis, the court denies
15 \$1,118.44 of the expenses requested. The total fees and expenses approved
16 by the court on a final basis are \$326,367.89.

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18 DATED: _____
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21 _____
JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE
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Case Nos. 01-55472-JRG and 01-55473-JRG

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's **ORDER ON CROSSROADS, LLC'S FINAL FEE APPLICATION** by depositing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

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